EXHIBIT L

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE COMPLAINT	*	
OF CORE COMMUNICATIONS, INC. VS.	*	CASE NO. 8881
VERERIZON MARYLAND, INC.	*	

DIRECT TESTIMONY

OF

STEVE MOLNAR

ON BEHALF OF THE STAFF
OF THE
PUBLIC SERVICE COMMISSION OF MARYLAND

September 21, 2001

EXHIBIT "L"

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

Direct Testimony of Steve Molnar
Case No. 8881
September 21, 2001

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND OCCUPATION.

A. My name is Steve Molnar. I am a regulatory economist in the Telecommunications Division of the Public Service Commission of Maryland.

Q. PLEASE OUTLINE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I received a Bachelor of Arts degree in accounting from Syracuse University in 1976 and a Master of Business Administration degree from Rensselaer Polytechnic Institute in 1981. I held various accounting positions in private industry until accepting employment with the Public Service Commission in 1984. Other positions I have held at the Commission include cost of capital analyst, fiscal administrator, and Assistant Chief Auditor, all in the Accounting Division.

Q. WHY WAS CASE NO. 8881 INSTITUTED?

A. Core Communications, Inc. ("Core") filed a complaint with the Commission on October 8, 1999, alleging that Verizon Maryland Inc. ("Verizon") breached its Interconnection Agreement with Core. On January 17, 2001, Core filed an Amended Complaint that raised new issues for the Commission to consider.

Although Verizon eventually provided interconnection to Core, the Commission found that the issues raised in the Amended Complaint required further investigation.[1] More specifically, the Commission was concerned as to whether the terms of the Interconnection Agreement were followed, and whether Verizon treated Core in the same manner as it treated itself. The instant proceeding was instituted to examine these issues.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to discuss certain issues raised in the Amended Complaint. The Amended Complaint consists of five counts that relate to Verizon's interconnection policies and practices as summarized below. My testimony will address all five counts. However, because the issues related to Counts II-IV are interrelated, I will discuss them together.

[1] Letter from Executive Secretary to Core and Verizon instituting Case No. 8881, dated February 26, 2001.

A. No. I could find no provision that requires a DS3 to be purchased from a dedicated fiber strand regardless of whether the DS3 would be used as an entrance facility or as a retail service.

Q. WHAT WAS THE REASON GIVEN BY VERIZON FOR NOT PROVIDING INTERCONNECTION USING THE EXISTING FIBER OPTIC RING?

A. Verizon stated that the existing fiber optic path was used to provide retail services and was not available to provide access to carriers who wished to interconnect with Verizon. Rather, Verizon needed to construct a new dedicated facility in order to complete the interconnection arrangements with Core. The time that was needed to construct the facilities delayed Core's ability to provide service to its own customers. I have attached three diagrams which depict the interconnection arrangements: (1) desired by Verizon, (2) desired by Core, and (3) the configuration eventually implemented.

Diagram 1 shows the arrangement preferred by Verizon including separate multiplexers for each customer at the BWC and the fiber strand dedicated to Core's use. Diagram 2 depicts Core's preferred arrangement. This scenario makes uses of a shared multiplexer between Core and other retail customers located at the BWC and the sharing of a single fiber strand with retail customers. Diagram 3 reflects the configuration that was eventually implemented. It is virtually identical to Diagram 1 except that the second multiplexer at the BWC was removed because the retail customer canceled its order with Verizon. The only other change is the reduction in the number of DS3 circuits that Core eventually purchased.

Q. IS IT STANDARD POLICY FOR VERIZON TO PROVIDE ENTRANCE FACILITIES TO COMPETITIVE LOCAL CARRIERS ONLY VIA DEDICATED FACILITIES AS OPPOSED TO SHARED FACILITIES?

A. Yes. Verizon states that all interconnecting CLECs must order dedicated entrance facilities and may not use a shared facility. Therefore, Verizon claims that it did not discriminate in its treatment of Core but, rather, followed its established requirement that entrance facilities can only be provided on a dedicated basis. If all carriers are treated alike, there can be no claim of discrimination.

However, the extent to which Verizon is discriminating among carriers is not at issue. The issue is whether or not Verizon is discriminating among carriers with respect to Verizon's own retail customers. This is addressed in more detail later in my testimony.

EQUAL IN QUALITY STANDARD FOR INTERCONNECTION

Q. DOES THE TELECOMMUNICATIONS ACT OF 1996 ("1996 ACT") ESTABLISH INTERCONNECTION REQUIREMENTS THAT APPLY TO THE ISSUES SET FORTH IN CORE'S COMPLAINT?

A. Yes. Section 251(c)(2) creates a duty for incumbent LECs (local exchange carriers) "to provide... any requesting telecommunications carrier, interconnection with a LEC's network...at any technically feasible point within the carrier's network...that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."

Q. IS INTERCONNECTION AT CORE'S BALTIMORE WIRE CENTER TECHNICALLY FEASIBLE?

A. Yes. Verizon does not dispute that interconnection is technically feasible. Moreover, Verizon activated interconnection at this location on December 23, 1999. However, the issue as to whether Verizon provided interconnection that is equal in quality to that provided to itself remains open. Verizon also believes that although it is required to provide interconnection at any technically feasible point, it is not required to provision interconnection in any prescribed way. Core alleges that

Verizon advised Core that "what is possible is often different from what is permissible." [4]

In response, Core alleges that Verizon's own interstate tariff requires that DS-1 circuits be provided within 9 business days and that a DS-3 be provisioned within 20 business days. Core alleges that a retail dedicated DS-3 is no different than a DS-3 entrance facility and that Verizon's construction delay constitutes unlawful discrimination.

Moreover, the Federal Communications Commission ("FCC") has addressed the relationship of interconnection that an incumbent carrier (Verizon) provides to itself. In the First Report and Order, paragraph 225, the FCC concluded:

> "We also note that section 251(c)(2) requires interconnection that is "at least" equal in quality to that enjoyed by the incumbent LEC itself."

Q. IS THE INTERCONNECTION THAT CORE RECEIVES EQUAL IN QUALITY TO THAT WHICH VERIZON PROVIDES TO ITSELF IN SERVING RETAIL CUSTOMERS?

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[4] *See* Letter from Michael B. Hazzard, Counsel for Core, to Marcus Brackman of Verizon, dated September

A. The answer depends on what is meant by "quality." If quality refers to a standard such that the technical characteristics and features are the same, then Core and Verizon's retail customers have equal interconnection. If, however, quality includes equal treatment with respect to timing of installation and/or other provisioning issues, then it becomes less clear that Verizon has met the standard.

Q. HAS THE FCC PROVIDED ANY GUIDANCE WITH RESPECT TO THIS ISSUE?

A. Yes. Section 51.305(a)(3)[5] of the FCC's rules states in part that an incumbent LEC (local exchange carrier) shall provide interconnection:

> That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party....This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality <u>as perceived by the requesting telecommunications carrier</u>. (Underlining added.)

1, 1999.

[5] *See* 47 CFR 51.305(a)(3)(1996).

I believe that a requesting carrier would perceive the equal interconnection standard to include installation intervals that are equal to those Verizon's provides to itself in serving retail customers. Anything less would mean that Verizon would have the ability to create an advantage for itself by serving its retail customers expeditiously while delaying the market entry of its potential competitors.

Q. WHAT ADVANTAGE WOULD AN INCUMBENT CARRIER ENJOY IF IT WAS ABLE TO DELAY THE MARKET ENTRY OF A COMPETITOR?

A. The immediate benefit to an incumbent carrier is that delayed entry creates additional costs for competitors. The fact that the competitor cannot operate and earn revenue while it continues to incur expenses only adds to the disadvantages that a new CLEC faces. The longer the delay, the greater the cost the incumbent carrier can impose and the less likely that the competitor will succeed in the long run. In addition, if the competitor has a business plan that targets certain customer groups, then the incumbent can market its services more aggressively during the period of delay. The Telecommunications Act of 1996 and its subsequent implementation by the FCC reflect the effort that was undertaken to minimize the opportunity for incumbent carriers to engage in these kinds of activities.

Q. ARE THERE ANY OTHER RULES THAT ADDRESS THE TIMING OF I INTERCONNECTION IN A MORE SPECIFIC WAY?

A. Yes. Part 51, Section 51.305(a)(5) states in part that an incumbent LEC shall provide interconnection:

> On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions the incumbent LEC provides such interconnection to itself. <u>This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection</u>. (Underlining added.)

Thus, it is clear that the FCC requires provisioning intervals for interconnection that apply to CLECs to be the same as those which apply to the incumbent carrier, or Verizon. If the provisioning times are different, then Verizon is acting in a discriminatory fashion.

CONCLUSION – COUNT I

Q. DO YOU AGREE WITH CORE'S ALLEGATION THAT VERIZON FAILED TO PROVIDE INTERCONNECTION WITHIN 45 DAYS AS REQUIRED BY SECTION 4.4.4 OF THE INTERCONNECTION AGREEMENT BETWEEN THE PARTIES?

No. First, there is doubt as to whether or not section 4.4.4 of the Interconnection Agreement ("Agreement") even applies to Core's initial request for interconnection. Section 4.4.4 states that the "Interconnection Date in a new LATA shall not be earlier than forty-five (45 Days) after receipt by BA of all complete and accurate trunk orders and routing information." (Underlining added.) The provisions that address initial interconnection are sections 3.0 and 4.0 of the Interconnection Agreement Appendix which provide that Interconnection Activation Dates are established by the parties and included as Schedule 3.0. However, Schedule 3.0 states that the completion dates for interconnection were

"TBD" or "to be determined." Therefore, the Interconnection Agreement does not establish a deadline when interconnection must be completed.

However, even if section 4.4.4 does apply, the plain language of this provision does not establish that interconnection must be provided within 45 days. Section 4.4.4. reads in part "the Interconnection Activation Date in a new LATA <u>shall not be earlier than</u> forty-five (45) days after receipt by Verizon of all complete and accurate trunk orders and routing information." (Underlining added.) Section 4.4.4 states that interconnection would occur <u>after</u> 45 days, not <u>within</u> 45 days. Therefore, I do not believe that Verizon was required to provide interconnection to Core with 45 days.

<u>CONCLUSION – COUNTS II, III, IV, AND V</u>

Q. WHAT ARE YOUR CONCLUSIONS CONCERNING THE REMAINING FOUR COUNTS SPECIFIED IN CORE'S COMPLAINT?

A. With respect to Counts II, III, IV, and V, I conclude that Verizon:

1. Failed to provide interconnection to Core on the same terms and conditions that it provides to itself;
2. Delayed Core's entry into the marketplace by requiring Core to use a dedicated entrance facility; and
3. Failed to provide interconnection in a reasonable time frame.

Q. WHAT IS THE BASIS FOR YOUR CONCLUSIONS?

A. As discussed in my testimony, the FCC requires incumbent carriers to provide interconnection on terms that are "perceived" to be equal by the requesting carrier and, in addition, within the same time frames as the incumbent carrier provides to itself. Verizon's FCC tariff provides for the installation of a retail DS3 with 20 business days (Attachment C). It took Verizon 149 calendar days to provide DS3 interconnection to Core at the BWC.

Rather than permit Core to use an available multiplexer on site at the BWC, Verizon required that the multiplexer be inventoried and not shared with other potential customers at 200 E. Lexington Street. Verizon also did not permit Core to share a fiber ring with retail customers even though Verizon permits its own retail customers to share fiber capacity. These interconnection procedures served to delay the entry of Core into the market place and create an artificial competitive advantage for Verizon.

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REBUTTAL TESTIMONY

OF

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OCTOBER 19, 2001

exchange of traffic and both are billed for the services they receive. The principal difference is that a Verizon retail customer is also the end user, whereas with a CLEC, the traffic must be delivered to the ultimate end user, the CLECs' customers.

Q. DO YOU AGREE WITH THE PANEL TESTIMONY ON PAGE 14 THAT THE COMPARISON YOU MADE TO THE INSTALLATION OF DS-3 SERVICE DOES NOT APPLY?

A. No. Core obtained DS-3 service from Verizon for the purpose of interconnecting with Verizon. As a requesting carrier, Core was entitled to, and Verizon was obligated to provide, interconnection that was equal to that provided to any other party. Verizon failed to meet this obligation.

Q. THE PANEL TESTIMONY EXPLAINS ON PAGES 17-18 THAT THE PROVISIONING OF INTERCONNECTION TO CORE WAS COMPARABLE AND, IN FACT, QUICKER THAN THAT PROVIDED TO OTHER CLECs. DO YOU BELIEVE THAT THIS INFORMATION ABSOLVES VERIZON OF CORE'S CLAIM THAT ITS ENTRY INTO THE MARKETPLACE WAS UNNECESSARILY DELAYED?

A. No. The length of time for provisioning interconnection to Core relative to provisioning interconnection to other carriers is irrelevant because that is not the standard. If it were, ILECs could take as long as they wanted to provide interconnection and, as long as they took the same amount of time for all carriers, there could be no issue of improper behavior. For example, if an ILEC took three years to provide interconnection to requesting carriers, and yet took only thirty days to provide service to its retail customers, under Verizon's argument there could be no claim of anticompetitive behavior because all carriers were treated the same. This interpretation is clearly wrong and not consistent with the pro-competitive goals of the Act.

Q. WHY IS IT IMPORTANT THAT VERIZON BE REQUIRED TO PROVISION INTERCONNECTION TO REQUESTING CARRIERS THAT IS EQUAL TO THAT WHICH IT PROVIDES TO ITSELF?

A. Any incumbent carrier, including Verizon, has an incentive to delay the market entry of its potential competitors. The sooner competitors enter the market, the sooner Verizon loses revenue that it would otherwise receive itself. Conversely, if the entry of competitors can be delayed, then revenue that Verizon would lose could be maintained at least until the competitor actually begins operating. Moreover, every day that a carrier cannot operate and provide service to customers is a day in which costs are incurred that are not offset with revenue. These conditions add to the financial burden of new CLECs and make it more difficult for CLECs to become viable going concerns over time. Any ILEC would have an incentive to create or promote these conditions if regulatory safeguards did not intervene.

It is also in the interest of incumbent carriers to delay market entry of competitors in order to either maintain existing customers or attract new ones. For example, If a business is considering obtaining service from a carrier other than the business' current provider, the incumbent has a substantial advantage in attracting the customer if can provide service in 30 days whereas a competitor cannot deliver service for several months. Incumbent service providers in any industry benefit from the delay of competitors into the marketplace.

Q. ON PAGES 21-22 THE PANEL TESTIMONY POINTS TO AN FCC ORDER TO JUSTIFY ITS POSITION THAT THE EQUAL IN QUALITY STANDARD FOR INTERCONNECTION DOES NOT APPLY TO VERIZON'S RETAIL SERVICE. DO YOU AGREE?

A. No. Similar to the example provided earlier in my testimony, Verizon has provided an incomplete discussion of what the FCC order concludes. In fact, the FCC order cited by Verizon states exactly what my testimony recommends; that the appropriate standard for interconnection is the comparison with retail service.[2]

Q. DOES THE FCC ORDER CITED BY VERIZON STATE, AS VERIZON CLAIMS, THAT THE FCC'S RULES FOR THE DESIGN AND OPERATION OF INTERCONNECTION FACILITIES REQUIRE THE SAME TECHNICAL CRITERIA AND SERVICE STANDARDS THAT ARE USED FOR INTEROFFICE TRUNKS (PAGES 21-22)?

A. Yes. However, the quotation supplied by Verizon applies to the "design and operation" of interconnection service quality and not to the provisioning of interconnection. In the following paragraph in the order, the FCC clearly states that its rules require an ILEC to "...provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function <u>to its own retail operations</u>."[3] (Emphasis added.) The New York 271 Order goes on to state in the same paragraph that the FCC's rules "interpret this

[2] In the Matter of the Application by Bell Atlantic New York for Authorization Under 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Released December 22, 1999, at ¶65 ("New York 271 Order").

obligation to include, among other things, the incumbent LEC's installation time for interconnection service and its provisioning of two-way trunking arrangements."[4] (Emphasis added.) A similar finding was made by the FCC with respect to the 271 application filed by SBC Communications, Inc. ("SWBT") for Kansas and Oklahoma. The FCC reiterated that "we are persuaded that SWBT provides competing carriers with interconnection trunking in both Kansas and Oklahoma that is equal-in-quality to the interconnection SWBT provides to its own retail operations...."[5]

Thus, there is no ambiguity in what the FCC's rules mean. My recommendation, that the Commission direct Verizon to add a new regulation to its Maryland tariffs that states that Verizon will provide interconnection to requesting carriers that is equal in quality, including the time required for installation, to that which Verizon provides to its own retail customers, is not a new requirement. It is simply a re-statement in the Maryland state jurisdiction of what the FCC already requires in the interstate jurisdiction.

[3] *Ibid.*
[4] *Ibid.*
[5] In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Released January 22, 2001, at ¶224.